

March 5, 2004

Via Electronic Filing

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: AT&T's Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP
Telephony Services Are Exempt from Access Charges,
WC Docket No. 02-361

Dear Mr. Chairman:

I am writing on behalf of the Voice on the Net Coalition ("VON Coalition") to express our deep concern with reports that the Commission may be prepared to deny the above-referenced Petition of AT&T and apply the current access charge regime to some forms of Voice over IP.

The growth and success of the Internet and Internet-based services like VoIP has depended and continues to depend on Internet services being largely free of traditional telecommunications regulation. Competition and innovation have flourished. The social benefits have been enormous.

The United States government, including the FCC, has been the key champions of this policy of "hands off the Internet."

The success of this hands-off policy and of Voice over IP as a technology has had a huge impact on rationalizing international settlements policies and reducing the cost to consumers of international communications. VON Coalition member companies handle an enormous amount of international traffic; these companies depend on enlightened policies towards VoIP regulation to gain market access and foster competition in foreign markets.

The genie is already out of the bottle. Countries that followed the informed lead of the U.S. have gained in competitiveness by allowing competition to reduce the cost of communication. Inexpensive internal and external communication is clearly as important as good transportation once was to economic well-being and competition in an international market for information-based services. Low access and communication costs – the results of wise FCC policy in the past – led to the development of an Internet-enhanced economy in the U.S. and to expanded opportunities for American companies overseas.

At the same time, countries that followed the US lead by dropping protection for communication monopolies and former monopolies in favor of lowering communication costs have made themselves tougher competitors in the international marketplace. If the US now adopts a more restrictive policy in order to protect the access charge revenues of some carriers, we will damage our own ability to compete in world markets. Importantly, other nations that have experienced the benefits of deregulation and competition, will not follow us backwards. We will hurt not only our carriers but all the other information-based and information-dependent companies in the US and our general ability to compete internationally **“leaving,”** as you said in your Senate testimony, **“the most powerful nation in the world a second class citizen in tomorrow's growing digital economy.”**

The priority must be to reform both access charges and intercarrier compensation regardless of technology; and, of course, the FCC is and has been working on that since March 2001. That is where the Commission should be focusing its efforts. It makes no sense to drag VoIP which, together with other Internet services helps keep the US competitive, into the morass of the existing access charge regime - which Congress directed the FCC to remove implicit subsidies from 8 years ago - prior to this reform and prior to the full deliberation the FCC is committed to under the VoIP NPRM. As you said at the recent hearing, **“First, do no harm.”** Denying the AT&T petition and discouraging VoIP will do harm not only to telecom but to the whole American economy as well as consumers who want and need cheap, available and more technologically advanced communication services.

We disagree in the strongest possible terms with those who advocate trying to distinguish between services that offer voice over IP and voice over the Internet. We have yet to see a definition that makes this line drawing clear or enforceable. In the absence of such a definition, new entrants will be required to spend inordinate resources on technical workarounds and legal challenges—resources better used for providing service.

Moreover, Phone-to-Phone VoIP plays an important role in the development of other forms of VoIP. VoIP would not be where it is today without phone-to-phone provider initial investment and innovation. Phone-to-phone providers have invested and are continuing to invest not only in the backbone but also in the critical gateways that enable other VoIP services to exchange calls with PSTN subscribers. These IP-to-PSTN gateways enable computer-to-phone and broadband-to-PSTN services and, as Metcalfe's law states, increase the value of the network by allowing more people across different networks to communicate with each other. For the next several years, the utility of VoIP depends on being able to exchange calls with the PSTN and the speed at which Americans and the American economy achieves the benefits of VoIP depends on the hybrid networks being built by phone-to-phone providers.

For those Americans who do not yet have a broadband connection to their home, phone-to-phone VoIP is the only benefit of this new technology available. Like dialup Internet access, the first mile is on the PSTN. These beneficiaries are generally less affluent than those who have broadband connections. They should not be denied the benefits of new technology just because they can't afford or can't yet get broadband connections. Their device of choice, or at least necessity, is the ordinary phone.

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Even though a ruling on just the AT&T petition may seem limited in scope, the result of denying this petition at this time prior to full hearings on a VoIP NPRM and complete rulemaking and access charge reform is almost certain to be both a flurry of declaratory ruling requests for different flavors of VoIP and attempted self-help against a multitude of VoIP providers by those who believe that whatever ruling the FCC has made gives them license for this.

We respectfully submit that resources are better deployed fixing the intercarrier compensation system and developing a coherent, long-term policy for addressing the regulatory treatment of VoIP. The VON Coalition is committed to engaging constructively in both those efforts.

I would welcome an opportunity to discuss this with you further at your convenience.

Respectfully submitted,

Tom Evslin
Chief Executive Officer, ITXC
Chair, VON Coalition Policy Committee

cc: Ambassador David A. Gross, U.S. Department of State
Michael D. Gallagher, Acting Administrator, NTIA
Commissioner Kathleen Q. Abernathy, FCC
Commissioner Michael J. Copps, FCC
Commissioner Kevin J. Martin, FCC
Commissioner Jonathan S. Adelstein, FCC
Donald Abelson, Chief, International Bureau, FCC